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UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

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12 TIMOTHY ROWAN,) CASE NO.
13 Plaintiff,)
14) FIRST AMENDED COMPLAINT FOR
15 vs.) DAMAGES AND OTHER RELIEF BASED
16) UPON:
17 BOYD GAMING CORPORATION, a Nevada)
Corporation,) 1. DISABILITY DISCRIMINATION AND
18) FAILURE TO ACCOMMODATE IN
19) VIOLATION OF THE AMERICANS WITH
20) DISABILITIES ACT
21) 2. VIOLATION OF THE FAMILY AND
Defendant.) MEDICAL LEAVE ACT
) JURY DEMAND
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Plaintiff TIMOTHY ROWAN ("Plaintiff" or "Rowan") alleges as follows:

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1. This action is brought pursuant to the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (hereinafter "ADA") and the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.* (hereinafter "FMLA"). Jurisdiction is predicated under these code section as well as 28 U.S.C. § 1331 as this action involves a federal question.

2. At all relevant times, Defendant BOYD GAMING CORPORATION, a Nevada Corporation (hereinafter "Boyd" or "Defendant") employed 50 or more employees for each

working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and is therefore subject to the provisions of the ADA and FMLA.

3. The events or omissions giving rise to Plaintiff's claim occurred in this judicial district, thus venue is proper here pursuant to 28 USC §1331(b)(2), and the ends of justice so require.

PARTIES

4. Plaintiff, Rowan, is a citizen of the United States and a resident of the State of Nevada, County of Clark and City of Las Vegas.

5. Plaintiff is informed and believes and thereon alleges that at all relevant times giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Boyd. Defendant is an employer within the meaning of *42 USC §2000e(b)*.

EXHAUSTION OF REMEDIES

6. Plaintiff timely filed a “Charge of Discrimination” with the Equal Employment Opportunity Commission (“EEOC”) and was issued a Notice of Right to Sue by the EEOC on March 26, 2014, a copy of which is attached to Complaint as Exhibit “A”.

FIRST CAUSE OF ACTION

(For Disability Discrimination and Failure

to Accommodate under the ADA)

7. Plaintiff Rowan incorporates the allegation set forth in paragraphs 1 through 6, inclusive, as if fully set forth herein.

8. Plaintiff was employed by Defendant as Director of Casino Training from November 1, 2004 until his discharge on April 16, 2013.

9. In or around April of 2012 Rowan was diagnosed with a medical condition, vasovagal nerve disorder. This nerve disorder leads to vasovagal episodes, vasovagal responses, vasovagal attacks and sometimes leads to vasovagal syncope which results in fainting.

10. The symptoms of vasovagal nerve disorder besides vasovagal syncope (fainting), include lightheadedness, disorientation, confusion, dizziness, nausea and sleeplessness.

1 11. Vasovagal nerve disorder leading to vasovagal syncope is caused by malfunction in
2 the parts of the nervous system that regulate heart rate and blood pressure and when this occurs,
3 heart rate slows, blood pressure drops, and the resulting lack of blood to the brain causes fainting
4 and confusion. This is triggered by among other things, stress, stress directly related to trauma,
5 sudden onset of extreme emotions, hunger and lack of sleep.

6 12. Plaintiff has been in and out of the hospital since April of 2012 because of this
7 disorder.

8 13. On or about April 8, 2013 Plaintiff was forced to take FMLA for this condition and
9 missed work because of his disorder starting on or about April 8, 2013. Rowan experienced
10 episodes of lightheadedness, disorientation, dizziness and unconsciousness during the time he was
11 on FMLA.

12 14. On or about April 11, 2013, Plaintiff was summoned to a mandatory meeting with
13 his supervisor Chuck Estell who was the Director of Casino Operations for Boyd. At the meeting
14 Rowan was told he was being placed on suspension pending investigation for failure to report to
15 work in a timely manner.

16 15. Rowan was unable to report to work in a timely manner because he was
17 incapacitated due to his condition.

18 16. On or about April 16, 2013, Plaintiff was summoned to another mandatory meeting
19 with Mr. Estell and was told by Mr. Estell that he was being terminated effective immediately for
20 violating company policy for failing to report to work in a timely manner.

21 17. Boyd was aware of Rowan's condition from about when he was diagnosed with the
22 disorder, back in April of 2012.

23 18. Prior to his discharge, Plaintiff had always received performance reviews of
24 proficient or better, the last of which he received on or about February 19, 2013.

25 19. Plaintiff continues to have vasovagal nerve disorder of which he continues to have
26 vasovagal episodes, vasovagal responses and vasovagal attacks for which he is currently under a
27 doctor's care. This condition is permanent and qualifies as a disability under the ADA as amended

by ADA Amendments Act of 2008, as Rowan's condition is a physical or mental impairment which substantially limits him in a major life activity.

20. By failing to accommodate Rowan's disability and terminating him for failing to report to work in a timely manner as a result of the disability, Boyd was in violation of the ADA.

21. As a direct, foreseeable, and legal result of the Defendant's failure to accommodate Plaintiff's disability and thereafter terminating him because of his disability, Plaintiff has suffered, overall economic losses in earnings, bonuses, job benefits and expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.

22. As a further direct, foreseeable, and legal result of the Defendant's failure to accommodate Plaintiff's disability and termination because of his disability, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress, nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of enjoyment of life and other pecuniary losses, the extent of which is not fully known at this time, for which Plaintiff seeks damages in an amount in excess of the minimum jurisdictional limits of this Court, also to be proven at the time of trial.

23. In acting as they did, Defendant knowingly, willfully, and intentionally acted in conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a sum according to proof at trial.

24. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.

25. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

SECOND CAUSE OF ACTION

(For Violation of the FMLA)

26. Plaintiff Rowan incorporates the allegation set forth in paragraphs 1 through 25, inclusive, as if fully set forth herein.

1 27. At all relevant times Plaintiff was an "eligible employee" as that term is defined by
2 29 U.S.C. § 2611(2), entitled to 12 work weeks of leave under 29 U.S.C. § 2612(a)(1).

3 28. At all relevant times the Defendant was an "employer" as that term is defined by 29
4 U.S.C. § 2611(4), as it was engaged in "commerce" and an "industry or activity affecting
5 commerce" within the meaning of 29 U.S.C. § 2611(1).

6 29. At all relevant times Plaintiff's medical condition (ie. vasovagal nerve disorder
7 resulting in vasovagal episodes, vasovagal responses or vasovagal attacks and sometimes resulting
8 in vasovagal syncope) constituted a "serious medical condition" as defined 29 U.S.C. § 2611(11).

9 30. Plaintiff provided Defendant with all necessary information regarding his need for
10 leave, and otherwise performed all duties necessary to take advantage of the rights conferred by
11 the FMLA.

12 31. Boyd unlawfully interfered with Plaintiff exercising his rights under FMLA by
13 terminating Rowan while he was on FMLA.

14 32. Further, Defendant's decision to discharge Plaintiff was in retaliation for Plaintiff
15 exercising his rights under the FMLA.

16 33. As a direct and proximate result of Defendant interfering with Plaintiff exercising
17 his rights under the FMLA and discharging Plaintiff for exercising those rights, Rowan has
18 suffered loss of income, including but not limited to past and future wages, benefits, expenses,
19 insurance, loss of back pay, front pay, other consequential damages, pain and suffering and other
20 damages to be proven at trial.

21 34. Defendant's actions were with deliberate indifference to such rights or were willful,
22 entitling Plaintiff to an award of liquidated damages equal to double the amount of his actual
23 damages.

24 35. Plaintiff claims the damages alleged herein, together with prejudgment interest as
25 provided by law, in a sum according to proof at trial.

26 36. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
27 his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to

1 proof at trial.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff Rowan demands judgment against Defendant, as follows:

- 4 1. Declaring that the acts and practices complained of here are a violation of ADA and
5 FMLA;
- 6 2. Enjoining and permanently restraining the violations by Defendant of the ADA and
7 FMLA;
- 8 3. For back pay and front pay for overall economic losses in earnings, bonuses, job
9 benefits and expenses, according to proof at time of trial;
- 10 4. For liquidated damages under the FMLA as an additional amount equal to the sum of
11 actual damages and interest;
- 12 5. For compensatory damages for mental and emotional distress, worry, indignity,
13 mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life
14 and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;
- 15 6. For punitive damages;
- 16 7. For attorney's fees and costs in an amount determined by the court to be reasonable;
- 17 8. For pre-judgment interest on all damages; and
- 18 9. For any other and further relief that the Court considers proper.

20 **DEMAND FOR JURY TRIAL**

21 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
22 jury in this action.

23 DATED: 6/23/2014

LAW OFFICES OF MICHAEL P. BALABAN

26 BY: /s/ Michael P. Balaban

27 Michael P. Balaban

28 LAW OFFICES OF MICHAEL P. BALABAN

10726 Del Rudini Street

Las Vegas, NV 89141

EXHIBIT A

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Timothy Rowan
7617 Lani Dawn Street
Las Vegas, NV 89149

From: Los Angeles District Office
255 E. Temple St. 4th Floor
Los Angeles, CA 90012

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

34B-2014-00266

EEOC Representative

Karrie L. Maeda,
State & Local Coordinator

Telephone No.

(213) 894-1100

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

March 26, 2014

(Date Mailed)

Enclosures(s)

Rosa M. Viramontes,
Acting District Director

CC: Ms. Sherree Cunningham
Director of HR
BOYD GAMING
3883 Howard Hughes Parkway
9th Floor
Las Vegas, NV 89189